IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

Crl.MC.No. 1133 of 2007()

CC.504/2003 of JUDL.MAGISTRATE OF FIRST CLASS, KOYILANDY
CRIME NO.333/97 OF KOYILANDY POLICE STATION.

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PETITIONER: ACCUSED 4 & 5

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1. RAOOF, S/O.ABOOBACKER, RIYAS MANZIL,
   VANMUGHAM AMSOM DESOM.

2. NADIM, S/O.KUNHABDULLA, NADIL MANZIL,
   VANMUGHAM AMSOM DESOM.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT & STATE

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1. STATION HOUSE OFFICER, KOYILANDY.

2. STATE REP; BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI.M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 10/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1133 OF 2007

Dated this the 10th day of April, 2007

ORDER

The petitioners are accused Nos.4 and 5 in a prosecution, inter alia, for the offences punishable, inter alia, under Sec.323 read with Sec.149 of the IPC. The crux of the allegations against them is that they along with the co-accused were members of an unlawful assembly of persons who wrongfully restrained a bus with passengers and beat C.Ws.1 to 3 with hands. The petitioners were not available for trial. All the co-accused have been found not guilty and acquitted. In the trial against the co-accused, only one of the three injured persons was examined as P.W.1. That witness did not support the prosecution case. Thereupon, all the co-accused, who stood trial, were found not guilty and acquitted.

2. The petitioners have come to this Court with a prayer that the proceedings against them may be quashed by

invoking the powers under Sec.482 of the Cr.P.C.

3. What are the reasons? Except that the co-accused have been acquitted in the trial held against them, no other reasons are urged. The hostility of P.W.1 to the prosecution cannot be of any help to the petitioners. In the trial against the co-accused, the judgment in which is produced as Annexure-I, all other injured witnesses have not been examined. The reasons are not explained. In any view of the matter, the mere fact that in the trial against the co-accused all relevant witnesses were not examined and that one of the relevant witness examined turned hostile cannot, at any rate, be a sufficient justification to invoke the powers under Sec.482 of the Cr.P.C. to prematurely terminate the proceedings against the absconding co-accused. The decision of the Full Bench of this Court in **Moosa v. Sub Inspector of Police** (2006 (1) KLT 552) concludes the question. I am satisfied that the application under Sec.482 of the Cr.P.C. cannot be allowed.

4. This Crl.M.C. is accordingly dismissed.

Sd/-
(R. BASANT, JUDGE)

Nan/ //true copy// P.S. To Judge